IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1267 of 2000
and
CIVIL APPLICATION NO. 2570 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE D.H.WAGHELA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARMAGNYABEN RAMANLAL JANI

Versus

MUNICIPAL CORP.OF AHMEDABAD REPRESENTING THRO'

Appearance:
MR KB TRIVEDI, for the appellant/applicant.
No one appears on behalf of the respondents despite service.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 19/03/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

This is a Municipal Valuation Appeal under Sec.411 of the Bombay Provincial Municipal Corporations Act against the judgment and order dated 28th April 1999 passed by the Small Causes Court, Court No.11, Ahmedabad in Municipal Valuation Appeal No.1207 of 1997.

The Municipal Valuation Appeal No.1207 of 1997 had been filed in respect of the premises bearing Survey No.1744 of Ward Jamalpur-2 against the fixation of G.R.V. at Rs.36,528/- by the respondents for the year 1996-97 as well as for the year 1995-96. The Small Causes Court has allowed the appeal for the year 1996-97 but has dismissed the same for the year 1995-96.

On behalf of the appellant Dharmagnyaben, the appeal has been argued by her husband, Shri K.B.Trivedi. Our attention has been invited to the contents of para 6 and 7 of the memo of appeal which was filed by the present appellant before the Small Causes Court. In the said memo of appeal which was filed before the Small Causes Court, in para 6, it has been categorically contended that if at all the respondent Corporation wanted to make any assessment of newly constructed building or to revise the assessment or in cases premises are entered for the first time in assessment book, it is obligatory for the Corporation to serve a special notice under the provisions of Taxation Rule 15(2) to the owner/occupier. Yet the Corporation has made the assessment for the year 1995-96 in violation of Rule 15(2), proviso (a) and (aa) of sub-clause (ii) of Sec.2(1A) of the Bombay Provincial Municipal Corporations Act and thereby the principles of natural justice have been violated and the assessment for the year 1995-96 as mentioned in the special notice for 1996-97 No.2351 dated 21st Feb.1997 is arbitrary. It has been further submitted that no special notice was served for the assessment of the year 1995-96 under Taxation Rule 15(2) nor any bill of the year 1995-96 was served upon the appellant or upon the occupier(tenant), i.e. Tej Warehousing & Counter Agencies. It has been further stated that the appellant came to know for the first time regarding assessment of the year 1995-96 only when the special notice NO.2351 dated 21st Feb.1997 (for the year 1996-97) under Taxation Rule 15(2) was served upon the appellant and it was for the first time that he came to know through this notice regarding the arrears of the year 1995-96 when Taxation Bill No.5366 dated 13th March 1997 was served upon her. It has been clarified that special notice No.2351 dated 21st Feb.1997 was meant only

for the year 1996-97 and in this notice the assessment of year 1995-96 was mentioned but for the purpose of assessment of 1995-96, there was no special notice served upon the appellant.

We have heard Mr.Trivedi on behalf of the appellant and have gone through the impugned order dated 28th April 1999. The ground with regard to the want of any special notice under Taxation Rule 15(2) was specifically raised in the memo of appeal, yet the same has not been dealt with in the order and the appeal for the year 1995-96 has been dismissed only by saying that there was not an iota of evidence produced on record for the year 1995-96 and no documentary evidence in support of the objection against the assessment for the said year had been produced. The Small Causes Court has observed that the documents were produced only for the year 1996-97. On the basis of this reasoning, the appeal for the year 1995-96 has been dismissed. It, therefore, appears that so far as the requirement of special notice for each assessment year separately has not been taken note of by the Small Causes Court and such a ground though raised in para 6 and 7 of the Municipal Valuation Appeal before the Small Causes Court, the Court has not considered and dealt with the same. This part of the impugned order dated 28th April 1999 passed by the Small Causes Court, Court No.11, Ahmedabad in Municipal Valuation Appeal No. 1207 of 1997 therefore suffers from the vice of non-adjudication so far as the appeal against assessment of the the year 1995-96 is concerned and the order deserves to be set aside to that extent on this ground alone. Therefore, we do not find it necessary to go into the other grounds raised by the appellant. Hence the order at item No.4 of the operative part, i.e. "Appeal for the year 1995-96 is dismissed" is hereby set aside. The matter therefore deserves to be remanded to the Small Causes Court, Court No.11, Ahmedabad for consideration of the appeal for the year 1995-96 de-novo. It will be open for the present appellant to raise all objections against the assessment for 1995-96 including the want of special notice in the remanded proceedings. The respondent Municipal Corporation shall also be at liberty to raise all objections including the factual reply as to whether the notice under Taxation Rule 15(2) had been issued and served upon the appellant for the year 1995-96 or not.

This appeal is therefore partly allowed in the terms as aforesaid for the year 1995-96. The concerned Court is directed to expedite the proceedings by giving priority to it preferably within a period of six months

from the date the certified copy of this order is produced before the concerned Court. Till the decision of the remanded proceedings, no action with regard to the recovery for the year 1995-96 will be taken to the prejudice of the appellant by the Corporation.

Since the main appeal itself has been decided, there is no question of any stay in the Civil Application for stay. The Civil Application for stay is therefore rejected.

19th March 2001 (M.R. Calla, J.)

(D.H. Waghela, J.)

Sreeram.